

## REMARKS

Applicants acknowledge receipt of an Office Action dated November 5, 2002. In this response Applicants have amended claims 1 and 24 and have added claims 26 and 27. Support for these amendments may be found in the specification *inter alia* in the first full paragraph on page 1, the second full paragraph on page 3 and the third full paragraph on page 7. Claim 14 has been cancelled without prejudice or disclaimer. Following entry of these amendments, claims 1-13, 15-16 and 18-27 are pending in the application.

Reconsideration of the present application is respectfully requested in view of the foregoing amendments and the remarks which follow.

### Rejections Under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph

On page 2 of the Office Action, the PTO has rejected claim 16 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph as allegedly being indefinite. Specifically, the PTO has stated that the meaning of the phrase "post hardened" in claim 16 is unclear. Applicants respectfully traverse this rejection and submit that the phrase, "post-hardening," is clear and definite within the meaning of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph in view of the explanation of the phrase in the paragraph bridging pages 7 and 8 of the specification. Applicants further note that a search for the phrases "post-hardening" and "post hardening" on the patent database on the USPTO website turns up 197 patents and 215 patents, respectively, which use these phrases. Accordingly, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

### Rejections Under 35 U.S.C. § 102

On page 3 of the Office Action, the PTO has rejected claims 1-10, 12-15, 18-20 and 23-25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 5,928,737 to Hammer *et al.* (hereafter "Hammer"). As set forth below, Applicants respectfully traverse this rejection.

As an initial matter, Applicants note that claim 14 has been cancelled without prejudice or disclaimer. The rejection of this claim is now moot.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP §2131.

In this response, Applicants have amended claim 1 to recite that "the thickness or wall thickness of the edible shaped body is from 20 to 60  $\mu\text{m}$ ". Thus, since Hammer fails to disclose an edible shaped body wherein "the thickness or wall thickness of the edible shaped body is from 20 to 60  $\mu\text{m}$ ," Hammer cannot anticipate claim 1 or any of the claims depending therefrom. With particular regard to dependent claim 24, Applicants note (1) that Hammer nowhere discloses that "the thickness or wall thickness of the edible shaped body is from 30 to 60  $\mu\text{m}$ ," (2) that this claim has been amended for grammatical consistency with claim 1 from which it depends and (3) that Applicants believe that this amendment does not narrow the scope of claim 24 as compared to the scope of this claim as originally presented for examination on the merits.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection of claims 1-10, 12-13, 15, 18-20 and 23-25 under §102.

#### **Rejections Under 35 U.S.C. §103**

On page 4 of the Office Action, the PTO has rejected claims 1-13, 16, 18-23 and 24-25 under 35 U.S.C. §103(a) as being unpatentable over WO 93/19125 to Lim *et al.* (hereafter "Lim") in view of U.S. Patent 5,679,145 to Andersen *et al.* (hereafter "Andersen"). In addition, the PTO, on page 6 of the Office Action, has rejected claims 14-16 and 24 under 35 U.S.C. §103(a) as being unpatentable over Lim in view of Andersen in further view of U.S. Patent 5,681,517 to Metzger (hereafter "Metzger"). Applicants respectfully traverse this rejection for the reasons set forth below.

In this response, Applicants have amended claim 1 to recite that "the thickness or wall thickness of the edible shaped body is from 20 to 60  $\mu\text{m}$ ." In addition, claim 14 has been cancelled without prejudice or disclaimer. Accordingly the rejection of this claim is now moot.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 580 (CCPA 1974). See MPEP §2143.03. Here, none of the cited references, taken either individually or in fair combination, teach or suggest an "edible shaped body in the form of a flat or tubular fiber containing film wherein the thickness or wall thickness of the edible shaped body is from 20 to 60  $\mu\text{m}$ ," as recited in amended claim 1. With particular regard to dependent claim 24, Applicants note (1) that none of the cited references, taken either individually or in combination, teach or suggest that "the thickness or wall thickness of the edible shaped body is from 30 to 60  $\mu\text{m}$ ," (2) that this claim has been amended for grammatical consistency with claim 1 from which it depends and (3) that Applicants believe that this amendment does not narrow the scope of claim 24 as compared to the scope of this claim as originally presented for examination on the merits.

Further, a prior art reference (or references) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Here, Applicants submit that the PTO has failed to establish a proper motivation for combining, *Lim*, a reference directed to the manufacture of cups, plates, knives and forks with *Metzger*, a reference directed to film tubes suitable for edible sausage casings. Applicants further submit that any exemplary thicknesses in *Metzger* simply would not be relevant in *Lim* and that one of ordinary skill in the art would not be properly motivated to combine these references.

If an independent claim is nonobvious under §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicants submit that claims 2-13, 15-16, and 18-25, which ultimately depend from claim 1, are also non-obvious.

In view of the foregoing, Applicants respectfully resuest reconsideration and withdrawal of the outstanding rejections under 35 U.S.C. §103.

**Newly Added Claims**

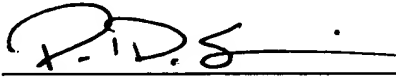
In this response, Applicants have added claims 26 and 27. Applicants submit that each of these claims is allowable for the same reasons as claim 1.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully submit that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

Date February 5, 2003

By 

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**MARKED UP VERSION SHOWING CHANGES MADE**

Below are the marked up amended claim(s):

1. (Four Times Amended) An edible shaped body in the form of a flat or tubular fiber containing film wherein the thickness or wall thickness of the edible shaped body is from 20 to 60  $\mu\text{m}$ , [which] wherein the edible shaped body does not contain collagen [and which] wherein the edible shaped body is based on biopolymers or cleavage products or derivatives thereof and/or synthetic polymers of natural monomers and wherein the edible shaped body is produced by a process having the following stages:

a) mixing the biopolymers, cleavage products or derivatives thereof and/or the synthetic polymers with at least one edible plasticizer, at least one lubricant and at least one crosslinker and fibers,

b) melting the resultant mixture to give a thermoplastic mass,

c) extruding this mass and

d) calendering and/or stretching or blowing the product obtained from the extrusion to give the edible shaped body.

24. (Amended) The shaped body as claimed in claim 1, wherein [its] the thickness or wall thickness of the edible shaped body is from 30 to 60  $\mu\text{m}$ .